Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Further Inquiry Into Certain Issues	)	WC Docket Nos. 10-90, 07-135, 05-337, 03-109
in the Universal Service-Intercarrier	)	CC Docket Nos. 01-92, 96-45
Compensation Transformation	)	GN Docket No. 09-51
Proceeding	)	

REPLY COMMENTS
of the
NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.;
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION;
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES; and the
WESTERN TELECOMMUNICATIONS ALLIANCE

September 6, 2011

TABLE OF CONTENTS

Summary

The RLEC Plan, as modified by the Consensus Framework, presents a unique opportunity to accomplish comprehensive reform of today's High-Cost Universal Service Fund (USF) program and Intercarrier Compensation (ICC) rules. If adopted as proposed, the amended RLEC Plan will: (1) refocus high-cost USF to support broadband services; (2) help to preserve the existing successes of rural rate-of-return (RoR) incumbent local exchange carriers (RLECs) in deploying broadband facilities and services; (3) enable further "edging out" of RLEC broadband networks, subject to the availability of incremental support and reasonable constraints on capital expenditures and operational expenses; (4) significantly reduce RLEC per-minute access rates while providing a sufficient and sustainable replacement mechanism for lost revenues; and (5) address uneconomic ICC arbitrage and related billing disputes. The RLEC Plan aims to accomplish these goals within overall budget targets for the next six years that are intended to be capable of supporting continued provision of affordable, high-quality broadband and voice services to rural consumers in RLEC service areas.

Recognizing the significant adjustments made by RoR carriers in developing the RLEC Plan, as well as the further concessions made by them to obtain the Consensus Framework with other industry stakeholders, many commenters urge the Commission to adopt the amended RLEC Plan without further modification or reductions in support. These commenters acknowledge the careful balance offered by the RLEC Plan, and recognize that additional reductions in RLEC support or further changes to funding mechanisms could undermine universal service rather than promote reform and the interests of rural ratepayers.

Others, however, urge the Commission to adopt alternative "plans" and proposals that, upon examination, are merely reiterations of general policy positions advanced in prior phases of this proceeding. These purported "alternatives" provide little, if anything, in the way of detail and even less in terms of how consumers would benefit by their enactment. Although some of the issues raised by commenters may deserve further study in subsequent phases of this proceeding, the Commission should not delay or detour away from immediately-needed reforms in order to pursue vague and impractical USF or ICC theories or conceptual designs, particularly when detailed and workable solutions -- such as the amended RLEC Plan – are at hand.

The Commission should also reject proposals submitted by various commenters that seek to "cherry-pick" or modify particular provisions of the RLEC Plan, as doing so would disrupt and unravel its carefully balanced and intertwined proposals. This would result in substantial harm to customers and the RLECs committed to serve them, and likely cause participants in the Consensus Framework to withdraw critically-needed support. Of particular concern, the Commission should not impose a hard cap on high-cost funding in lieu of the funding targets established by the Plan. The record provides no basis for imposing such a cap, which in any event would be contrary to statutory requirements for "sufficient" support. Nor should the Commission attempt to implement supposedly "competitively neutral" support mechanisms such as reverse auctions as the record has repeatedly shown these methods – to the extent they can be defined at all in this record – to be unworkable for RLEC areas.

Finally, the comments make clear with respect to ICC reform that the access Restructure Mechanism (RM) component of the RLEC Plan is essential to the continued provision of universal service in areas served by RoR carriers. The Commission should accordingly refrain from modifying the proposed RM calculation (such as by considering revenues from non-regulated services) or phasing out the RLEC RM. It is also essential that the Commission take prompt action to shut the door on phantom traffic and confirm that non-local Voice over Internet Protocol (VoIP) traffic that originates or terminates on the Public Switched Telephone Network (PSTN) is subject to payment of access charges. Failure to do so will exacerbate problems with access avoidance and make it impossible for overall USF funding to remain within the budget targets contemplated by the Consensus Framework.

The time for concepts and theories is long past. Reform will go nowhere if the industry continues to spiral around high-level policy debates and grinding of "old axes" in lieu of delving into the gritty details that are essential to complete the reform process after a decade of failed attempts. The RLEC Plan offers just such a concrete path forward. The Rural Associations look forward to working closely with the Commission and other industry stakeholders over the coming weeks to develop detailed plans, including draft rules, that will enable the amended RLEC Plan to be implemented in the coming year.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Further Inquiry Into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding	))))	WC Docket Nos. 10-90, 07-135, 05-337, 03-109 CC Docket Nos. 01-92, 96-45 GN Docket No. 09-51

REPLY COMMENTS
of the
NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.;
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION;
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES; and the
WESTERN TELECOMMUNICATIONS ALLIANCE

More than 120 parties, including the Rural Associations, filed initial comments on the Commission's *Public Notice* in the above-captioned proceeding.[1] While many support prompt Commission adoption of the RLEC Plan, as modified by the Consensus Framework,[2] others continue to press policy agendas over detailed proposals and urge the

[1] *Further Inquiry Into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45 GN Docket No. 09-51, Public Notice, DA 11-1348 (rel. Aug. 3, 2011) (*Public Notice*). *Connect America Fund,* WC Docket No. 10-90, *et al.*, Order, DA 11-1471 (rel. Aug. 29, 2011) (extended due date for reply comments).

[2] The RLEC Plan was presented to the Commission in the Rural Associations' April 18 Comments, *see* Comments of NECA, NTCA, OPASTCO, and WTA, WC Docket No. 10-90, *et al.* (filed April 18, 2011) (*Rural Associations' April 18 Comments*), and modified as described in the *Joint Letter* filed by the Rural Associations (representing rural rate-of-return incumbent local exchange carriers (RLECs)) and six price cap carriers on July 29, 2011. *See* Letter from Walter B. McCormick, Jr., United States Telecom Association, Robert W. Quinn, Jr., AT&T, Melissa Newman, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, Michael D. Rhoda, Windstream, Shirley Bloomfield, NTCA, John Rose, OPASTCO, and Kelly Worthington, WTA, to Chairman Julius Genachowski, Commissioner Michael J. Copps,

Commission to attempt more radical – and unworkable – reforms of today's High-Cost Universal Service Fund (USF) program and Intercarrier Compensation (ICC) rules.

In these Reply Comments, the Rural Associations demonstrate why the Commission should adopt the amended RLEC Plan as filed and refrain from adopting the alternative "plans" suggested by some commenters. The amended RLEC Plan provides an historic opportunity to accomplish practical and effective USF and ICC reforms. In contrast, the USF/ICC reform alternatives proposed by some commenters are not defined plans for reform, but instead consist largely of broad policy statements recast from earlier phases of these proceedings with little detail and even less discussion of their impact on the future provision of affordable and "reasonably comparable" broadband and voice services in rural areas. Likewise, the Commission should reject suggestions to further amend the RLEC Plan in various ways, as doing so will harm consumers, undermine and unravel agreements reached in the Consensus Framework, and likely destroy chances for accomplishing sustainable USF and ICC reform at any time in the foreseeable future.

I. THE RLEC PLAN, AS MODIFIED BY THE CONSENSUS FRAMEWORK, PROVIDES A REASONABLE, REALISTIC AND PRACTICAL PATH FOR REFORM.

The Commission has been seeking to reform the High-Cost USF program and ICC rules for a decade. Before the National Broadband Plan and the several notices

---

Commissioner Robert M. McDowell, Commissioner Mignon Clyburn, FCC, WC Docket No. 10-90, *et al.* (filed July 29, 2011) (*Joint Letter*). The Rural Associations provided additional information regarding estimated RLEC funding requirements and individual USF and ICC reform mechanisms in a joint written ex parte filed August 29, 2011. Letter from Jeffrey E. Dupree, NECA, to Marlene H. Dortch, FCC, WC Docket No. 10-90, *et al.* (filed Aug. 29, 2011) (*Rural Associations' August 29 Ex Parte*).

released over the last 18 months,[3] the Commission came close to achieving reform in 2008.[4] Before the 2008 plan, there was the "Missoula Plan."[5] Before the Missoula Plan, there was a 2005 Further Notice of Proposed Rulemaking on ICC reform.[6] The 2005 Notice was based upon initial attempts at ICC reform dating back to 2001 and beyond.[7] During this time, various portions of the Commission's high-cost USF rules have also been subject to further examination and/or appellate review.[8]

---

[3] *See* Federal Communications Commission, *Connecting America: The National Broadband Plan* (rel. Mar. 16, 2010); *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 (2011) (*NPRM*); *Public Notice*, DA 11-1348 (rel. Aug. 3, 2011).

[4] *See High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service Contribution Methodology*, WC Docket No. 06-122, *Numbering Resource Optimization*, CC Docket No. 99-200, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, *IP-Enabled Services*, WC Docket No. 04-36, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475 (2008).

[5] *See, e.g., Comment Sought on Missoula Intercarrier Compensation Reform Plan*, CC Docket No. 01-92, Public Notice, 21 FCC Rcd 8524 (2006).

[6] *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005).

[7] *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001).

[8] *See, e.g., Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, 16 FCC Rcd 6141(2001) (RTF Recommendation); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, 19 FCC Rcd 10805 (2004) (ETC Process Designation); *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, 22 FCC Rcd 9705 (2007) (CETC Cap); *High-Cost Universal Service*

The instant proceeding represents a rare opportunity for the Commission to break this logjam and finally tread a path to sensible and responsible High-Cost USF and ICC reform. Although certain parties may believe the Consensus Framework does not go far enough to reinvent existing programs and rules (and while a few parties argue conversely that it goes too far), the Consensus Framework represents a detailed, balanced, and pragmatic approach to comprehensive reform that is capable of getting the Commission and the industry beyond the seemingly endless stalemate. The Consensus Framework is the product of substantial efforts and compromise by some of the largest contributors to the USF as well as those who depend the most upon the Fund. Likewise, these carriers include those who pay the most in ICC, and those who rely the most upon ICC revenues to support broadband-capable network investment, keep rates affordable, and maintain continuing service as carriers of last resort (COLRs) in hard-to-serve rural areas.

The RLEC Plan, as modified by the Consensus Framework, reflects a direct response both to the needs of rural consumers and the providers committed (and in many instances, legally bound) to serve them, as well as to the Commission's articulated principles for reform. Of benefit to rural consumers, the RLEC Plan seeks to preserve the past and present successes of RLECs in bringing quality, affordable voice and broadband

---

Support, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1495 (2008) (Reverse Auctions); *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008) (Identical Support); *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1531 (2008) (Joint Board Comprehensive Reform NPRM); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, 24 FCC Rcd 14858 (2010); *Qwest Communications Int'l, Inc. v. FCC*, 398 F.3d 1222 (10th Cir. 2005).

services to their high-cost rural areas. Indeed, the Plan is centered on the concept of sustainability – ensuring that high-speed broadband not only becomes available to additional customers over time, but also helping to assure that such services will remain available and affordable for consumers over the long term.

As to the Commission's principles for reform, the amended RLEC Plan promotes **fiscal responsibility** by seeking to satisfy annual "funding targets" that would start near current funding levels and trend slightly upward over the next six years to accommodate access restructuring and additional broadband build-outs where possible. The RLEC Plan achieves **modernization** by beginning to phase out existing RLEC high-cost support mechanisms while phasing-in a new "Connect America Fund" (CAF) that will be focused upon support of broadband-capable networks. It also fulfills the mandate for **accountability** by proposing to maintain COLR obligations and other key systematic measures (*e.g.*, uniform accounting and regulatory audit and review programs) that are proven means of confirming the proper use of USF resources. The RLEC Plan attempts to meet the Commission's call for **"market-driven"** policies (even in rural areas where there often is no "market" to speak of) by incorporating reasonable constraints on capital expenditures and operating expenses that will demand even-greater efficiency from RLEC operations and further an effective allocation of USF resources. Finally, the RLEC Plan also contains a "pause point" and transitional mechanisms designed specifically to permit adjustment and modifications to the Plan in the future as market conditions or regulatory objectives warrant.

Those who oppose the RLEC Plan offer little, if anything, in the way of meaningful or pragmatic alternatives. Indeed, such comments appear primarily aimed at derailing reform or "grinding old axes" rather than promoting a practical or thoughtful outcome anytime soon. For example, the National Cable and Telecommunications Association (NCTA) calls for the Commission to impose unilaterally and without any record basis an 8.5 percent rate of return for RLECs in advance of an arbitrary "sunset" of rate of return regulation altogether in 2019.[9] But NCTA provides *no analysis whatsoever* of the impact of this proposal on consumers or the USF itself. Instead, NCTA falls back on the baseless theory that the Commission should have compelled RLECs to move to a forward-looking cost support model 14 years ago,[10] conveniently ignoring the subsequent Rural Task Force debate and the ultimate decision by the Commission that imposing model-based support on RLECs was ill-advised.[11]

NCTA's suggestions further overlook conspicuously that the 8.5 percent rate of return suggested by the State Members of the Federal-State Joint Board for Universal Service was a (partial) *total company* rate of return,[12] meaning that intrastate regulated

---

[9] NCTA at 11.

[10] *Id*. at n. 23 (citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) ¶ 26). If NCTA wants to revisit the determinations of the Rural Task Force, it should confront those arguments directly rather than pretending as if those determinations did not exist.

[11] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244 (2001) ¶ 25.

[12] *See* Comments of the State Members of the Federal-State Joint Board for Universal Service, WC Docket No. 10-90, *et al.* (filed May 2, 2011) at 36-37. The State Members' recommended specifically that the Commission apply the 8.5 percent rate of return to interstate and intrastate regulated operations, as well as certain (but not all) non-regulated operations. Concerns about such a "partial total company" approach – both with respect to the nature of the operations excluded and the fundamental problems with "regulating" non-regulated operations – were discussed at length in the Rural Associations' May 23 and August 24 comments in this proceeding. Comments of NECA, *et al.,* WC Docket

operations would likewise be included in that assessment. Indeed, NCTA's proposals could engender results inapposite to NCTA's goals: factors indicate that many RLECs may be earning significantly *less than* 8.5 percent in the intrastate jurisdiction (and on many non-regulated operations such as video too),[13] meaning that NCTA's proposal could ironically lead to an *increase* in high-cost support for RLECs as those "under-earning" in the state jurisdiction "make up" those revenues through incremental federal high-cost funding.

Examples such as these reinforce that late-breaking proposals (such as NCTA's "Amended ABC Plan") – especially those that are driven primarily by a policy agenda rather than any meaningful data or substantive impact analyses – can offer no substitute for pragmatic, well-developed proposals such as those in the amended RLEC Plan. Indeed, last-minute proposals, such as the NCTA recommendations or the Tech/User group suggestions[14] lack substantive details and (as demonstrated above) are potentially

---

No. 10-90, *et al.* (filed Aug. 24, 2011) at 28-30; (*Rural Associations' August 24 Comments*); Reply Comments of NECA, *et al.*, WC Docket No. 10-90, *et al.* (filed May 23, 2011) at 27-32 (*Rural Associations' May 23 Replies*).

[13] *See, e.g.,* Letter from David C. Duncan, Iowa Telecommunications Association, to Marlene H. Dortch, FCC, WC Docket No. 10-90, *et al*. (filed May 17, 2011) at 2 (identifying an average 2.63 percent *total company* rate-of-return for Iowa RLECs). The Rural Associations further note that simply applying an 8.5 percent rate-of-return to interstate revenue requirements and high-cost support without a represcription proceeding or a waiver of the kind discussed in the *Rural Associations' August 24 Comments* would run afoul of Part 65, and more importantly run the substantial risk of undermining (if not driving into bankruptcy) the operations of many RLECs.

[14] *See* Letter from Ad Hoc Telecommunications Users Committee, Google, Skype, Sprint Nextel, and Vonage, to Chairman Genachowski, and FCC Commissioners, WC Docket No. 10-90 (filed Aug. 18, 2011) (*Ad Hoc Tel. Users Committee, et al. Letter*). The Tech/User letter proposes to establish two funding vehicles – one for Broadband Builds, and the other for Broadband Operations. Scant details are provided, however, as the letter primarily urges the Commission to "gather and rely upon" data, and then speculates with no evidence whatsoever that after initial construction, providers "may well have few, if any, further subsidy requirements." *Id*. at 4-5. The letter also cursorily and

dangerous, particularly when the potential impacts are not demonstrated to be understood even by their proponents.

As the Rural Associations have emphasized throughout this proceeding, given the importance of broadband to the economic and civic future of rural America, it is essential that the Commission be methodical and surgical, rather than experimental, in its USF and ICC reforms. A particular policy approach that may seem "visionary" or "progressive" could turn out to be disastrous if put into practice without a thorough understanding of its implications. Calls for the Commission to jettison rate-of-return regulation altogether (without identifying any practical alternative),[15] or to implement reverse auctions (despite the multitude of unanswered questions regarding their design and impacts),[16] or to adopt entirely new "Build" and "Operations" funding mechanisms (based upon little more than a 10-page letter),[17] should be rejected with swiftness and certainty. Such visceral

---

arbitrarily proposes that operational support sunset after three years, *id.* at 5, without apparently understanding that networks last much longer, and the costs of operations do not necessarily drop over time – particularly in high-cost, sparsely populated areas. Indeed, if anything, it is more likely that operating costs will *increase* as networks age and additional maintenance is required. The letter does propose to allow providers to reapply for operational support, but the process for such is undefined and it is unclear how creating additional administrative costs in such a process would be more efficient, effective, or accountable than a review of actual operating costs.

[15] *See, e.g.*, Viaero at 15-17. Viaero summarily suggests that "a model" should be used as an "external benchmark" for RLEC cost recovery, but then provides no citation to any model that could be used for such a purpose – and apparently does not recall (or wishes to forget) the lengthy and detailed debate in the Rural Task Force with respect to the problems of using model-based support for smaller carriers operating in diverse areas.

[16] Comcast at 25; Ad Hoc at 9-10; Satellite Broadband Providers at 4-5, 15-16. *Cf. Rural Associations May 23 Replies* at 38-43 (highlighting the lack of development – and even patent confusion – in the record with respect to the operation of any reverse auction process).

[17] *See Ad Hoc Tel. Users Committee, et al. Letter.*

advocacy provides no visibility into the impacts of reform on rural consumers and, consequently, no sound path forward for responsible policymaking.

In lieu of leaping into the unknown based upon undeveloped proposals and last-minute pleas for purportedly-groundbreaking (and equally damaging) policy shifts, the Commission should adopt the RLEC Plan, as modified by the Consensus Framework. The RLEC Plan represents a sensible, well-defined path forward, building upon proven and effective mechanisms for the deployment and operation of broadband-capable networks in high-cost rural areas. Moreover, to ensure that it remains responsive over time to both consumers' needs and the Commission's reform objectives, the RLEC Plan includes a pragmatic opportunity for further calibration as needed at a transitional "pause point" built into the plan.

Finally, to the extent the Commission may believe that certain proposals require further consideration – such as the so-called "donut and hole" concept or questions of the extent of additional funding needs for rural wireless operations – the best course is not to derail or forestall reform altogether at this time. Instead, consistent with the Rural Associations' most recent comments, the Commission can and should proceed forward by adopting the amended RLEC Plan, and then take up any additional items to the extent necessary and appropriate in the context of further notices of proposed rulemaking during the transition. [18] In particular, the Associations agree with comments submitted by ITTA *et al.* suggesting the Commission study and then address with due speed the potential

[18] *Rural Associations' August 24 Comments* at 12-13 (noting that the Commission should review more closely in a further notice to what degree support may be needed by small rural mobile wireless providers for support in areas where there is no other such provider) and 24-26 (discussing how implementing a "donut and hole" concept might undermine the Commission's budgetary objectives and otherwise require further study and development prior to implementation).

need to tailor USF and ICC reforms to meet the special circumstances faced by carriers operating in Alaska and insular areas.[19]

II. MODIFYING THE RLEC PLAN IN WAYS PROPOSED BY SOME COMMENTERS WILL HARM RURAL CONSUMERS, DESTROY CHANCES FOR USF AND ICC REFORM IN THE NEAR TERM, AND DELAY INDEFINITELY ACCOMPLISHMENT OF THE COMMISSION'S BROADBAND OBJECTIVES.

As the Rural Associations explained in initial comments, the Consensus Framework represents a landmark agreement among parties whose individual views of USF and ICC reform diverge greatly. Despite these differences, parties to the discussions developed a carefully-balanced path towards reform, agreeing to make significant and difficult compromises in the interest of achieving regulatory certainty and promoting sustainable broadband networks. Accordingly, the Consensus Framework hangs on a delicate balance and upon multiple and intertwined accommodations and concessions.

---

[19] ITTA, *et al.* at 28-29. ("It is sound public policy for the Commission to take into account the unique circumstances facing service providers in Alaska and Hawaii and craft universal service and intercarrier compensation rules that meet the needs of the providers and, thus, consumers in those states."). The Rural Associations note in this regard that providers in Alaska and Hawaii, as well as Puerto Rico, filed comments suggesting alternative approaches to determining USF support as well as ICC reform in their respective areas. *See* ACS at 10-15, 17-20; GCI at 24-28; Hawaiian Telecom at 13-19; PRTC at 6-9, 12-13. The Rural Associations do not object to consideration of some type of supplemental safety net mechanism for COLRs operating in Alaska and insular areas as needed to assure availability of reasonably comparable broadband services, provided such supplemental support does not adversely impact support available to other carriers under the Consensus Framework's funding targets. Moreover, the Rural Associations note that any "unique" plan for these areas that includes maintenance (or freezes of) "identical support" for competitors should be considered a non-starter. It would be both ironic and paradoxical to treat such areas as "special" based upon their difficulty to serve, only to then exempt those who serve there from demonstrating their circumstances actually justify special relief. To the extent that any such relief is justified for wireless competitors who operate in areas where there is no other wireless provider, these companies should be required to demonstrate their own costs. The Commission could consider how such a showing would be made as part of a further notice of proposed rulemaking.

Further changes to the amended RLEC Plan may very well render it unworkable, could undermine the solvency of RLECs, would harm consumers who depend upon these COLRs today for affordable services, and set back chances for meaningful reform anytime in the foreseeable future. For these reasons, the Rural Associations have urged the Commission to adopt the amended RLEC Plan as proposed, subject only to refinements designed to assure accomplishment of the Consensus Framework's key objectives.[20]

Numerous parties nevertheless urge the Commission to consider modifications which, if adopted, would undermine the Consensus Framework and, with it, any reasonable prospects for accomplishing the Commission's goals for USF and ICC reform. Although it is impossible to address all proposed modifications to the RLEC Plan and/or the Consensus Framework presented by commenters, a few warrant explicit rebuttal given their potential adverse impact. For example, several commenters argue in favor of replacing the budget targets contained in the Consensus Framework with a hard cap on overall USF funding. Others seek changes to the distribution mechanisms proposed under the theory that they are not "competitively neutral." As discussed below, the Commission should not adopt any of these suggestions.

[20] One such refinement, noted in the Rural Associations' initial comments, might be to incorporate an additional short-term transition process to help in sustaining maintenance of current service levels and ensuring a reasonable opportunity to repay loans taken out in reliance upon existing support mechanisms. *See, e.g.*, *Rural Associations' August 24 Comments* at 5, note 12. As stated therein, this could take the form of a "hold harmless" support mechanism or some other "safety net" vehicle that could, for a defined and limited period of time, "smooth out" any funding shortfalls resulting from the recalibration of the prescribed interstate rate of return or other aspects of the reforms that may be adopted by the Commission. The Rural Associations continue to explore such a refinement as described in the *Rural Associations' August 29 Ex Parte.*

A. The Funding Targets Incorporated in the Consensus Framework Must Not Be Replaced by An Inflexible Cap on Future Funding Levels.

The Commission must not replace the funding targets incorporated in the Consensus Framework with an overall hard cap on the High Cost program (or its individual components). The Rural Associations have previously shown that a hard cap on overall high-cost funding would be contrary to the statutory principle in section 254(b)(5) of the Act that there be "specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service" as well as section 254(e)'s express requirement that such specific Federal universal service support should be "explicit and sufficient" to achieve the universal service purposes of section 254.[21] The aggregate $4.5 billion high cost support budget target (as well as the separate funding targets for price cap carrier areas, rate-of-return (RoR) carrier areas, and mobility objectives) proposed in the Consensus Framework constitute a far more effective approach for driving and demanding efficiency in the reform and operation of these programs, while avoiding the legal quagmire that would arise in adopting a firm (and potentially permanent) cap notwithstanding the statutory mandates cited above.

The Commission is well equipped to review the proposals in the amended RLEC Plan and take the steps necessary to confirm they meet the appropriate budgetary objectives. Moreover, the RLEC Plan contains a "pause point" that offers the Commission the ability to recalibrate the program as necessary moving forward. The plan is designed to be flexible, so that the Commission can better balance competing

[21] *E.g.,* Joint Comments of NECA, *et al*., WC Docket No. 10-90*, et al.* (filed July 12, 2010) at 34 *(Rural Associations' July 12 Comments);* Joint Reply of NECA, *et al*., WC Docket No. 10-90*, et al.* (filed Aug. 11, 2010) at 6.

objectives for budgetary controls and broadband investment moving forward without having to undertake reform from scratch. By contrast, a "hard and durable permanent cap" like that proposed by entities such as Comcast[22] and the American Cable Association (ACA)[23] would put universal service on an unsustainable track even as the nation faces unpredictable and difficult economic times. A "hard and durable" cap would put at substantial risk maintenance of current networks and deter carriers from further network upgrades, as they question their ability to recover costs over the life of any proposed investment. Similarly, such an approach would discourage investors, who would undoubtedly question the reliability of their own existing portfolios and would almost certainly decline to advance any further funds for investment even if a carrier wanted to invest in the face of a cap.

Indeed, the ultimate and predominant advantage of a budget target over a permanent cap is flexibility. No one has any certainty as to what the world or the telecommunications and broadband service sector will look like in this timeframe. For example, Comcast asserts without support that "[f]iscal responsibility requires" a cap, and that "the Commission's funding decisions should focus on maximizing consumer benefits . . . ."[24] Yet even as it raises such claims, Comcast provides not one shred of evidence to explain why current funding levels are adequate, sufficient, or appropriate in perpetuity, or what the real impact would be to consumers whom Comcast purports to protect. No data are provided, no citations to studies are supplied, and no rate level examinations are included with Comcast's plea to establish a cap in the interest of

[22] Comcast at 22.

[23] *E.g.,* ACA at 8.

[24] Comcast at 22.

consumer benefit. In short, there is no evidentiary basis upon which to adopt a cap of the kind suggested by Comcast, and its assertions in support thereof are remarkably devoid of support.[25]

Moreover, if high-cost support for broadband is based upon a permanent hard cap, it will have to be specified in a Commission rule, which would have to be changed via formal notice and comment rulemaking during which time industry and/or economic conditions may well render it obsolete or harmful. As this proceeding has demonstrated exceedingly well, rulemakings can take years or decades to resolve.[26] In contrast, a budget target can be revised by the Commission much more readily if significant inflation or deflation renders the current dollar amount unrealistic, or if the national interest, broadband demand and/or the evolution of technology and broadband applications require more rapid deployment of higher-capacity broadband networks and services.

In addition, permanent caps can have unintended and unforeseen consequences. For example, the current cap on the High Cost Loop Support (HCLS) mechanism has arguably created improper investment signals for carriers subject to that support vehicle.[27] In contrast, budget targets give the Commission more flexibility to address and discourage certain practices when they are first noted, in lieu of letting such unintended market signals perpetuate pending further rulemaking.

---

[25] Comcast's sole argument appears to be that capping the fund is necessary to minimize carriers' contribution burdens. *Id*. at 22. Of course, much-needed contributions reform in which the responsibility of supporting universal service is more broadly spread across *all of those* who use and/or rely upon broadband-capable networks would offer a much better and more direct way of addressing this concern, without the need to adopt arbitrary caps.

[26] *See supra* pp. 3-4.

[27] *Rural Associations' April 18 Comments* at 9-10, 39-40.

Proponents of permanent hard caps like Comcast and ACA do not, and cannot, offer any evidence that these caps will continue to allow for sufficient support as required by the Act, and otherwise operate effectively to encourage appropriate broadband deployment, adoption and use as economic, technological and social conditions change. This advocacy is not backed by any economic analysis, but rather is merely a policy agenda – albeit one that could have serious economic consequences. While ACA speculates that budget targets "will result in tremendous pressure for the Commission to forego fiscal discipline and increase funding" after the initial period,[28] one can speculate with equal "certainty" that the initial budget targets will result in inertia, and that it will be difficult to convince the Commission to alter or lift a cap even if economic conditions and broadband market developments scream for additional funding. All that anyone can know at this point is that budget targets are more flexible than permanent hard caps, and can be much more readily modified to address the economic and industry changes (probably substantial) that are likely to take place at any given point in the future. The Commission should therefore adopt the funding targets proposed under the Consensus Framework, without superimposing an arbitrary cap by rule atop them.

Some commenters, in contrast, express concern that the budget targets proposed under the Consensus Framework are too tight, or that the period of time covered under the Consensus Framework may be too short to alleviate lender and investor concerns about funding broadband investment projects.[29] Since the Commission may be reluctant to adopt longer-term plans at this time given current economic uncertainties, the amended RLEC Plan attempts to provide reasonable and predictable levels of support over an

[28] ACA at 8.

[29] *E.g.*, Rural Broadband Alliance at 12.

eight-year transition period for ICC rate reform, while also recognizing the potential need for the Commission to revisit high-cost funding levels consistent with the requirements of section 254 following an initial six-year period.[30] If, however, the Commission "locks in" proposed budget targets and/or effectively treats them as caps throughout and after the transition periods, these commenters' concerns would indeed have merit, as investors would be faced with the knowledge that there is virtually no prospect for further support beyond the levels available during the transition period itself, even if "market conditions" in rural areas indicate otherwise. This would be far more likely to chill investment and discourage lenders than the budget target approach proposed in the Consensus Framework.[31]

B. Proponents of "Competitively Neutral" Support Mechanisms Fail to Acknowledge Real-World Conditions Faced by Rural Telecommunications Providers.

A number of commenters criticize the Consensus Framework for directing high-cost support toward wireline carriers, and urge the Commission to adopt some

[30] *Rural Associations' August 24 Comments* at 6. Moreover, as noted above, the RLEC Plan includes a "pause point" at which the Commission could recalibrate specific pieces of the plan to the extent necessary to address market conditions.

[31] The same is true with respect to any potential modification that results in an arbitrary phase-down, phase-out, or other reduction to USF/CAF or RM support for RoR carriers. For example, the unexplained proposal contained in the *Public Notice* to alter the current formula for limiting recovery of corporate operations expenses would substantially harm RLECs, particularly smaller ones, by lowering the threshold at which the cap applies and by failing to account for any growth in such expenses over time. The Commission should simply extend the current formula in the first instance across all USF support mechanisms in lieu of "tweaking" it in some way that could have unintended or unforeseen impacts across the rest of the reforms that are adopted. Similarly, the Nebraska Companies' suggestion that the Commission expand the proposed limitation on recovery of corporate operations expense to cover all operations expenses via some form of regression analysis, *see* Nebraska Rural Independent Companies at 43-46, could have profound and, at this stage, unquantifiable impacts and therefore should not be adopted.

"competitively neutral" mechanism for determining high-cost support distributions.[32] Others fault the RLEC Plan for continuing to rely on traditional RoR regulatory methods to determine funding levels.[33] In support, these commenters rehash theoretical economic arguments and propose "market based" solutions for USF distributions, such as reverse auctions, which have been shown in prior phases of this proceeding to be unworkable for RLEC areas.[34]

The point of the amended RLEC Plan, as explained above, is to move past impractical "solutions" and theoretical concepts in favor of mechanisms and rules that can work in the real-world environment faced by RoR carriers providing service as COLRs in high-cost, sparsely populated rural areas. While the Rural Associations do not dispute the need to consider carefully how support mechanisms should account for the presence of competitive alternatives in some areas, these issues are incredibly complex and cannot be quickly resolved with a simplistic solution.[35]

Contrary to the views of some,[36] the amended RLEC Plan is not a narrow and backward-looking effort to promote wireline industry interests and objectives at the expense of broadband deployment and other public interest goals. Rather, it constitutes a pragmatic way to preserve and promote access to high-quality, affordable broadband services that many rural consumers enjoy only because the existing High Cost program

---

[32] *E.g.,* Pac-West at 7; Ad Hoc at 9-10; NCTA at 16, note 38; RCA at 17-18.

[33] *E.g.*, Viaero at 16-17.

[34] *See Rural Associations' May 23 Replies* at 38-42.

[35] *Id.* at 40; *supra* note 19.

[36] *E.g.,* Ad Hoc at 6; NCTA at 10, 14; Google 23, at note 74; RCA at 1-2, 7, 11; Satellite Broadband Providers at 2; Viaero at 11-12.

for RLEC service areas has been so effective.[37] Indeed, there are at least three critical facts that underscore the need for continuing support of these last-resort networks.

The first critical fact to recognize is that wireline networks presently provide the basic underlying broadband transmission service, and wireline technology will likely remain the highest-speed and highest-capacity broadband technology for the foreseeable future. Wireline technology is already capable of bandwidths in excess of 1 Gigabit per second, and is the current technology best able to accommodate emerging high bandwidth applications and services (including, for example, cloud computing, ultra high-definition video, advanced videoconferencing and telepresence, real-time collaboration, smart appliances, home security, virtual laboratories, telesurgery, and remote diagnosis and medical imaging). In addition, wireline networks provide essential backhaul facilities for wireless carriers, and deliver high volumes of voice, data and video traffic to households and businesses that would swamp wireless networks if they were required to carry it. Although wireless providers' advertisements boast impressive capacities, "[o]nly subscribers closest to the base station" will see those performance levels.[38]

This condition is endemic to all wireless technologies; even the most vaunted solutions have limitations: "Wireless network deployment in the 700 MHz band will provide a boost in network capacity, but it will be 2014 before these networks will be

---

[37] *See, e.g., Rural Association April 18 Comments* at 8, note 6 ("RLEC receipts from high-cost USF support have been increasing at only about 2.5 to 3 percent per year on average in recent years – even as RLEC receipts from ICC have declined over the same period and RLECs have edged out digital subscriber line ("DSL")-speed broadband availability to over 92 percent of their customers, albeit at varying speeds.").

[38] *Defining Broadband Speeds: An Analysis of Peak vs. Sustained Data Rates in Network Access Architectures*, ADTRAN, at 7 (2009) (*ADTRAN White Paper*).

broadly deployed, and, even then, their capacity is quite finite."[39] Long Term Evolution (LTE) technology, perceived by many as the Holy Grail of broadband, may be strong but is still limited when compared to wireline.[40] And, as critical as total network capacity may be, the ability to sustain reliability is paramount, particularly when dealing with health-care or financial transactions.[41] "The point is not that the wireless network cannot deliver extremely useful and valuable services, since it can, but rather that wireless capacity is inherently limited compared to wireline capacity."[42]

A second critical fact is that much of the ultimate wireline broadband network is already constructed and in operation. Put simply, these are investments that were made pursuant to and in reliance on current rules, and it would only undermine those networks (and harm the consumers who depend upon them for service) if changes to the rules undercut that support.[43] Moreover, the supported wireline network in operation today does not just offer plain old telephone service (POTS) – it enables broadband and even wireless. There are not now, nor will there be, separate wireline voice and broadband networks. Rather, existing intercity and interexchange lines and "last mile" customer loops are used to deliver both voice and broadband traffic, and circuit switches are being

---

[39] *Mobile Broadband Constraints and the Need for Optimization*, Rysavy Research, at 5 (Feb. 24, 2010) (available at http://www.rysavy.com/Articles/2010_02_Rysavy_Mobile_Broadband_Capacity_Constraints.pdf) (*Rysavay*).

[40] *Id.* at 10.

[41] *ADTRAN White Paper* at 15.

[42] *Rysavy* at 11.

[43] Of course, the Commission should also consider the ongoing confidence of investors and lenders with respect to putting future capital at risk in the rural telecommunications market if the ability to recover a substantial portion of their prior investments and recoup loan proceeds were to be wiped out with the single stroke of a regulatory pen here.

steadily replaced by softswitches and routers. As the Rural Associations have repeatedly indicated, RLECs have already edged fiber out further into their "last mile" networks to give over 90 percent of their rural customers access to broadband at varying speeds. It will be much more efficient and economical to continue to provide RLECs with the support needed to extend their fiber facilities and upgrade their hybrid fiber-copper digital subscriber line (DSL) "last mile" loops than to spend scarce resources to fund the construction and deployment of entirely new rural networks.

Third, as the Rural Associations have previously discussed,[44] wireline and wireless networks offer complementary rather than substitutable services. Many of the ILECs supporting the Consensus Framework (including AT&T and Verizon, the operators of the nation's two largest wireless networks) have interests in wireless networks. At the present time and for the foreseeable future, virtually all U.S. businesses and a substantial majority of U.S. households subscribe to both wireline and wireless services, and use them for complementary fixed and mobile purposes.

The Rural Associations reiterate that they support a separate high-cost mechanism to support mobile broadband networks in high-cost areas where no other mobile broadband service is available.[45] They further support the Consensus Framework proposal of an initial $300 million per year Mobility Fund, and believe as an initial matter (subject to additional consideration in a Further Notice of Proposed Rulemaking) that this amount could be reasonable in light of the Commission's budgetary constraints until the

---

[44] *E.g., Rural Associations' August 24 Comments* at 10-12; *Rural Associations' April 18 Comments* at 52, note 111.

[45] *Rural Associations' April 18 Comments* at 83.

impacts of Verizon, Sprint and other merger conditions become clear.[46] Finally, as the Rural Associations explained in comments, there may be a place for satellite broadband services in the emerging broadband world, but since it is not clear how (or why) they need support, the Commission should not use any of the funding dedicated to mobility objectives for satellite services at the present time.[47]

III. THE ICC REFORM PROPOSALS SET FORTH IN THE AMENDED RLEC PLAN ARE CRITICAL TO THE CONTINUED PROVISION OF BROADBAND SERVICES IN RURAL AMERICA AND SHOULD BE ADOPTED WITHOUT DELAY.

A. The Proposed RLEC Plan's Access Restructure Mechanism is Essential to Assuring Continued Provision of Service to Rural Consumers in RLEC Areas.

The record compiled in response to the *Public Notice* supports immediate adoption of the ICC reform provisions for RoR carriers set forth in the amended RLEC Plan, including the proposed RLEC access restructure mechanism (RM). Among other things, the amended RLEC Plan establishes a reasonable transition path for the reform of RoR carriers' ICC rates. If adopted as proposed, the RLEC Plan's ICC reform approach, including the RM, will enable the continued availability of quality, affordable voice and broadband services for consumers in RLEC service areas without unacceptable rate increases or service disruptions.[48]

---

[46] *Rural Associations' August 24 Comments* at 12.

[47] *Id.* at 13, note 22.

[48] The $4.5 billion annual budget target for the High Cost program, which lasts from 2012 to 2017, includes a funding target for RoR carriers that begins at $2 billion and grows modestly to $2.3 billion over six years. Notably, this funding target includes the cost of the RoR carrier RM during the six-year budget period.

Numerous commenters emphasize the critical importance of offsetting reductions in RLECs' ICC rates with sufficient and sustainable RM funding.[49] For example, GVNW, a cost consultant to many RLECs, points out "access charges represent roughly 1/3 of their [clients'] revenue streams."[50] This revenue source, along with high-cost universal service support, has enabled RLECs to serve as COLRs offering affordable voice and broadband services to high cost, sparsely-populated rural areas of the nation that other providers have historically chosen not to serve. It is essential these revenues be replaced if RLEC networks are to remain available to serve consumers, businesses and support the provision of complementary and competitive services in these companies' rural serving areas.[51]

Moreover, as some commenters note, both government and private lenders look to the stability of RoR carriers' revenue streams when considering whether to extend loans.[52] This suggests that the lack of a sufficient and sustainable RM, as provided for in the amended RLEC Plan, would prevent these carriers from gaining access to the capital

[49] *See, e.g.*, TCA at 10; Surewest at 13; Wisconsin State Telecommunications Association at 1; Arizona Local Exchange Carrier Association at 1; GVNW at 14; SDTA at 5; Illinois Independent Telephone Association at 1. Under the Consensus Framework, if sufficient funding is not expected for any reason to be available to provide the necessary levels of high-cost support and/or ICC restructuring for RoR carriers in any given year, then any and all further reductions in these carriers' ICC rates during that period would be deferred until sufficient funding does become available.

[50] GVNW at 14. *See also* TCA at 10; STDA at 4 ("The South Dakota RLECs obtain approximately 28 percent of their total regulated revenues from intercarrier compensation.").

[51] For example, wireless carriers often rely on ILECs' special access circuits for backhaul from their base stations and cell sites.

[52] California Independent Telephone Companies (CITC), Colorado Telecommunications Association (CTA), *et al.* (Western Associations) at 11-12 (referring to a recent RTFC filing stating that "[c]apital markets and private lenders would react positively to regulatory certainty and cash flow stability by adoption of RLEC associations' proposals for USF and ICC."). *See also*, Oklahoma Telephone Association at 2.

necessary to upgrade and extend their broadband capable networks over time. This ongoing network investment is necessary for RoR carriers to make available services that are "reasonably comparable" to those available in urban areas. Furthermore, the precipitous loss of ICC revenues without RM funding may force some RLECs to pursue substantial end-user rate increases, default on existing loans and potentially discontinue COLR services in portions of their territories. None of these results would be consistent with the FCC's goals for broadband availability throughout the nation or the universal service goals of the 1996 Act.

A few commenters assert that the Commission should not "guarantee" RoR carriers' ICC revenues or insulate them from competitive losses.[53] As an initial matter, there is no "guarantee" involved in the RLEC Plan – with the inclusion of a rate benchmark for residential voice service and an intrastate regulated earnings test, [54] the plan clearly does not contemplate or provide any "dollar for dollar" offset to reductions in ICC revenues. What is provided, however, is some certainty that, subject to those constraints, RLEC COLRs will not suffer revenue shock from ICC revenues that disappear even as the obligations underlying them remain. The point of high-cost USF support, including the new RM, is to assure continued availability of COLR services in areas that are uneconomic to serve. Finally, the proposed RLEC RM incorporates

---

[53] Time Warner Cable at 12; CTIA at 19; Comcast at 15.

[54] The *Rural Associations' August 29 Ex Parte* included, among other things, a detailed explanation of the way in which the RLEC RM would be calculated. With respect to the intrastate earnings test, the ex parte explained that earnings on regulated intrastate operations in excess of 10 percent for a particular year will be used to offset the intrastate component of the RM calculated for that year after the SLC revenue offset has been taken into account. Since the mechanism does not include any adjustment in cases where intrastate earnings fall below the 10 percent level, carriers remain at risk for under-recovery.

adjustment mechanisms that reflect changes in carriers' switched access revenue requirements, which have been declining in recent years as carriers complete network upgrades and increasingly incorporate more efficient IP-based technology in their networks.[55]

Some commenters suggest that the $25 rate benchmark for residential voice service included in the amended RLEC Plan is too low.[56] As TCA explains, however, the rate benchmark for RoR carriers[57] is designed to ensure that "customers contribute a fair, but not excessive, amount towards their services."[58] The $25 rate benchmark takes into account that RoR carriers typically have much smaller calling scopes than larger carriers, thus requiring their customers to make a greater number of tolls calls, on average. The RoR carrier benchmark also accounts for the fact that rural consumers, on average, have lower incomes than urban consumers. Thus, the residential voice service benchmark included in the amended RLEC Plan balances the need to ensure that rural consumers in these areas continue to have access to affordable telephone service while also ensuring

---

[55] As explained in the Rural Associations' initial comments and the *Rural Associations' August 29 Ex Parte*, the interstate portion of the RLEC RM is equal to interstate access revenue requirements less revenues from capped interstate access rates (as well as LSS support amounts). Intrastate RM amounts for each RLEC are determined by first establishing a base year terminating revenue requirement (including intrastate terminating switched access and net reciprocal compensation revenues, adjusted each year by the percent change in the carrier's interstate switched access revenue requirement) and then deducting the carrier's annual terminating access revenues (which include net reciprocal compensation payments, certain increases in the federal Subscriber Line Charge (SLC) if required, and any intrastate earnings on regulated services over 10 percent as determined by an annual intrastate regulated earnings test.).

[56] *E.g.,* Sprint Nextel at 22; NASUCA at 91.

[57] The $25 benchmark rate includes the residential basic local exchange rate, intrastate and interstate SLCs, mandatory EAS charges, and per-line contributions to a state universal service fund.

[58] TCA at 3. *See also, e.g.,* NASUCA at 91.

that the size of the RoR carrier RM does not unduly burden consumers nationwide. Also, because the $25 benchmark includes per-line contributions to a state USF as well as intrastate subscriber line charges (SLCs), it is designed to mitigate potential impacts on consumers in states that have already taken action to reform intrastate ICC rates. [59]

Calls for the Commission to consider revenues from non-regulated services for purposes of determining RM funding amounts for RoR carriers[60] should also be rejected. As discussed by the Rural Associations at length in prior filings in this proceeding,[61] it has long been Commission policy that RLECs' regulated and non-regulated costs and revenues should be kept separate. At a time when the Commission is seeking to expeditiously adopt comprehensive USF and ICC reform (and in the wake of several Commission proceedings where it has tread carefully around Title I and Title II regulation), it does not make sense for it to wade into the legal and practical quagmire of attempting to define those non-regulated services which should be included in the RM calculation from those that should not. Moreover, to include non-regulated revenues in the RM calculation the Commission would also need to consider non-regulated costs. Since many RLECs barely break even and sometimes lose money on the sale of certain non-regulated services, such as video, including non-regulated services in RM

[59] Certain commenters object to any SLC or rate increases associated with ICC reform, asserting such charges will penalize consumers. *E.g.,* NASUCA at 103. One commenter suggested the same benchmark should be used to reduce *both* ICC RM *and* USF support. *See Public Notice* at 7, note 27. The RLEC Plan benchmark strikes a reasonable balance between the need to promote some level of rate parity between states in addressing ICC reform, while also avoiding massive rate increases on rural end users who are required by law to have access to "affordable" service.

[60] NCTA at 21-22; Sprint Nextel at 22; Comcast at 16; Time Warner Cable at 15.

[61] *Rural Associations' April 18 Comments* at 18-19; *Rural Associations' May 23 Replies* at 27-32, 49-50; *Rural Associations' August 24 Comments* at 28-30.

calculations could ironically cause an increase in RM funding requirements, contrary to these parties' apparent intent.

Finally, it is important to reiterate that unlike the RM for price cap carriers included in the ABC Plan, the RLEC RM does not and should not include a sunset date or phase-down mechanism. This is entirely warranted due to the unique circumstances faced by RoR carriers.[62] ICC revenues compose a significant portion of RLECs' revenue streams and, as noted above, the loss of these revenues without an alternate source of recovery could have severe consequences for the rural consumers in their service areas. RoR carriers also "differ in their ability to replace ICC revenue streams"[63] as compared to other carriers, due to a number of factors. These include sparsely populated service areas that lack any urban core, a much smaller percentage of high-volume business customers,[64] and a lack of pricing flexibility for regulated services.[65] Since RLECs generally have few opportunities to offset revenue losses from ICC rate reductions, sunset of the RLEC RM would jeopardize these carriers' ability to maintain and extend

[62] Panhandle Telecommunications Systems at 3, 6.

[63] TDS at 6; *See also* GVNW at 15.

[64] Among RLECs, business customers account for only about 20 percent of total subscriber lines served. In contrast, business customers account for nearly twice that percentage of lines served by larger carriers (*i.e.*, those with more than 10,000 lines). *See* Industry Analysis and Technology Division, Wireline Competition Bureau, *Trends in Telephone Service* (Sept. 2010) at 8-6, Table 8-2. Moreover, while the data are not readily available, it is not unreasonable to conclude that even where multiline business customers may reside in RLEC study areas, those customers are unlikely to be anywhere near the size of enterprise customers in urban and suburban settings.

[65] Recognizing these factors, the ABC Plan affords price cap carriers significant flexibility in assessing SLCs, providing two separate paths for reducing constraints on SLC rates depending on whether a carrier elects to receive support from the transitional price cap RM mechanism. *See* Letter from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream, to Marlene H. Dortch, FCC, WC Docket No. 10-90, *et al.* (filed July 29, 2011), Appendix A at 11-12 (*ABC Plan*).

their broadband networks, repay existing loans, and continue offering "reasonably comparable" services at "reasonably comparable" rates.

B. ICC Obligations Must Apply Consistently to All Providers Using the PSTN, Regardless of Technology Used to Originate or Terminate Calls.

The Rural Associations' initial comments also emphasized the critical importance of prompt, effective action by the Commission to resolve "access avoidance" problems caused by providers claiming exemption from access charges on the basis of the technology they use to originate or transport calls.[66] Clarifying that non-local VoIP traffic is subject to access charges at interstate rate levels is essential to meeting the Consensus Framework budget target and for relieving pressure on the necessary size of the RM.[67]

Some commenters nevertheless continue to argue that interconnected VoIP traffic should be exempt from access charges because these offerings qualify as "information" services.[68] Others object to paying the same ICC rates as providers offering similar voice telephony services on the theory these charges are overstated and/or outdated.[69] These providers urge the Commission to mandate bill-and-keep arrangements for such traffic, variously claiming this would accelerate the construction of broadband networks, reduce network operators' costs and/or benefit consumers.[70]

---

[66] *Rural Associations' August 24 Comments* at 47-51. The comments also noted how these problems appear to be getting worse as providers develop new schemes, such as "CMRS in the middle," to disguise ordinary long distance calls as enhanced service traffic. *Id.*

[67] *Id.* at 47-48.

[68] VON Coalition at 2; Cellular South, Appendix at 4-5, 10; US Cellular at 7.

[69] *E.g.,* Sprint at 9; VON Coalition at 4, 8; T-Mobile at 5.

[70] *E.g.,* Google at 16; Vonage at 2; Sprint at 7, 10; T-Mobile at 6; VON Coalition at 2; Viaero at 8.

As the record in this and related proceedings makes clear, however, no rational basis exists for exempting non-local interconnected VoIP traffic from access charges.[71] Nor is there any reason ILECs should be forced to agree to bill-and-keep arrangements with interconnected VoIP providers. There is no actual evidence that existing ICC rules have hindered the transition to all IP-networks – to the contrary, RLECs are converting their networks to IP technology at a rapid pace.[72] Far from reducing costs, mandating provision of free termination services for interconnected VoIP traffic would likely lead to increased network congestion and require additional investment as providers divert traffic to "free" facilities.[73] Finally, as noted above, exempting interconnected VoIP providers from ICC obligations would substantially increase upward pressure on the RM and put any efforts to satisfy the pre-defined budget targets in the Consensus Framework at substantial risk of failure.[74]

Several commenters point out that since terminating carriers cannot distinguish interconnected VoIP traffic from other voice traffic,[75] providers will have incentives to falsely identify their traffic as VoIP in order to take advantage of lower rates during the transition.[76] Others suggest such problems can be resolved by requiring carriers to certify

---

[71] *See e.g.*, Comments of NECA, *et al.*, WC Docket No. 10-90, *et al.* (filed Apr. 1, 2011) at 4-10 (*Rural Associations' April 1 Comments*); *Rural Associations' July 12 Comments* at 69-70; *Rural Associations' May 23 Replies* at 51-56.

[72] *Rural Associations' May 23 Replies* at 57-58.

[73] *Id.* at 56-57; NASUCA at 18-19.

[74] *Rural Associations' May 23 Replies* at 55; ICORE at 6.

[75] Cbeyond, *et al.* at 13-14; Bright House at 8-9; Earthlink at 12; Nebraska PSC at 21; Pac-West at 9; Time Warner Cable at 8-9; *See* Vonage at 5; *see also* Texas Statewide Telephone Cooperative at 8 (should not eliminate intrastate terminating minutes)

[76] *E.g.*, Vonage at 5; NASUCA at 112; Cbeyond et al. at 13-15, Cincinnati Bell at 4, Bright House at 3; Earthlink at 12; Pac-West at 8-9.

the percentage of their relevant voice traffic that originates in IP, provided the Commission vigorously enforces penalties for submission of false information.[77]

As the ABC Plan Sponsors suggest, the Commission might resolve these problems in a variety of ways – for example by permitting LECs to incorporate specific access tariff provisions requiring carriers delivering traffic for termination to identify the percentage of traffic that is VoIP and provide support in the form of traffic studies or other reasonable analyses that are subject to audit or certifications.[78] The ABC Plan Sponsors also correctly point out, as did the Rural Associations, that these problems would be of limited duration, since the Consensus Framework applies different rates to VoIP traffic for a limited period, and carriers certainly can work together during that time to develop reasonable billing methods once clear ground rules are established by the Commission.[79]

The Commission should not, however, seek to impose one-size-fits-all safe harbor rules as suggested by some providers. Doing so would not account for widely varying mixes of traffic types among voice service providers, and inevitably would lead to over- or under-billings.[80]

The Rural Associations also strongly support prompt Commission action to resolve "phantom" traffic problems via clear, enforceable rules governing call signaling information.[81] Since, as noted above, temporary problems associated with distinguishing

---

[77] *E.g.*, Comcast at 20.

[78] ABC Plan Sponsors at 36.

[79] *Id.; See also Rural Associations' August 24 Comments* at 50.

[80] ABC Plan Sponsors at 36; Earthlink at 15-16.

[81] *Rural Associations' August 24 Comments* at 47-48; *Rural Associations' April 1 Comments* at 16.

VoIP from other forms of traffic could be resolved using verifiable traffic factors and billing procedures, there may not be time or any pressing need to create new signaling systems or other measures specifically designed to deal with VoIP billing.[82] Nevertheless, rules governing the provision of true call origination numbers, prohibitions on the substitution of intermediate switch or "gateway" numbers in signaling streams, rules governing the provision of carrier/provider identification codes, and confirmation that calling and called telephone numbers may be used as a default mechanism to establish call jurisdiction, are all critically important to resolving ongoing billing issues during the ICC transition contemplated under the Consensus Framework and must be implemented as soon as possible.

IV. CONCLUSION

The RLEC Plan, as amended by the Consensus Framework, provides a unique opportunity to accomplish comprehensive USF and ICC reform. If adopted as proposed, the amended RLEC Plan will refocus high-cost USF to support broadband services while promoting continued provision of existing services to consumers in RLEC areas. Proposed ICC reforms will significantly reduce RLEC per-minute terminating access rates, provide sufficient and sustainable replacement support, and address uneconomic ICC arbitrage and related billing disputes.

In contrast to various late-breaking alternative "plans" submitted by some parties, the amended RLEC Plan provides the Commission with detailed, practical, and implementable solutions to many of the USF and ICC reform issues that have stalled

[82] *See also* Charter at 4 (Rate disparity under the current proposal would be a temporary one and there would be no meaningful time to create new signaling systems or technological solutions to categorize traffic as circuit-switched or VoIP).

reform efforts for years. The Commission should also reject proposals submitted by various commenters seeking to modify particular provisions of the RLEC Plan, as doing so will unravel the carefully balanced and intertwined nature of the amended plan and likely cause participants to withdraw critically-needed support. Rather than perpetuate endless debates over impractical solutions, concepts, theories, and "wish lists," it is far past time for the Commission and industry stakeholders to dive into the details and implement real, workable plans for reform. The amended RLEC Plan presents just such a path forward, and the Rural Associations look forward to assisting the Commission in accomplishing this important and historic task.

September 6, 2011

Respectfully submitted,

NATIONAL EXCHANGE CARRIER
ASSOCIATION, INC.

By: [signature]
Richard A. Askoff
Linda A. Rushnak
Its Attorneys
Teresa Evert, Senior Regulatory Manager
80 South Jefferson Road
Whippany, NJ 07981
(973) 884-8000

NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION
By: /s/ Jill Canfield
Jill Canfield
Director, Legal and Industry
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
(703) 351-2000

ORGANIZATION FOR THE
PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS
COMPANIES
By: /s/ Stuart Polikoff
Stuart Polikoff
Vice President – Regulatory Policy and
Business Development
2020 K Street, NW, 7th Floor
Washington, DC 20006
(202) 659-5990

WESTERN TELECOMMUNICATIONS
ALLIANCE
By: /s/ Derrick Owens
Derrick Owens
Director of Government Affairs
317 Massachusetts Avenue NE, Ste. 300C
Washington, DC 20002
(202) 548-0202

By: /s/ Gerard J. Duffy
Gerard J. Duffy
Regulatory Counsel for Western
Telecommunications Alliance
Blooston, Mordkofsky, Dickens, Duffy &
Prendergast, LLP
2120 L Street NW, Ste. 300
Washington, DC 20037
(202) 659-0830

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Associations' Reply Comments was served this 6th day of September, 2011 by electronic filing and e-mail to the persons listed below.

By: /s/ Elizabeth R. Newson
Elizabeth R. Newson

The following parties were served:

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Best Copy and Printing, Inc.
Room CY-B402
445 12th Street, SW
Washington, DC 20554
fcc@bcpiweb.com

Charles Tyler
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Charles.Tyler@fcc.gov